



BROTHERHOOD OF LOCOMOTIVE ENGINEERS

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GENERAL COMMITTEE OF ADJUSTMENT
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October 16, 1998

EQAL-98-3 1

FRA-1998-4701-1

Ms. Renee V. Bridgers
Acting Docket Clerk
Federal Railroad Administration
400 Seventh Street, SW
Washington, DC 20590

DEPT. OF TRANSPORTATION
DOCKET SECTION
98 NOV -5 AM 12:16
OCT 22 PM 1:11

CERTIFIED LETTER: Z 042 456 558

Reference: Locomotive Engineer Certification Case, Engineer M. A. Dixon,
FRA Docket Number EQAL-98-3 1

Dear Ms. Bridgers:

Pursuant to the provisions of 49 CFR Part 240.407 and on behalf of Engineer M. A. Dixon, we hereby request an Administrative Hearing in the above referenced proceeding.

In decision issued October 8, 1998, received October 13, 1998, the Locomotive Engineer Review Board denied the petition filed April 20, 1998 in behalf of Engineer Dixon as per 49 CFR Part 240.401 and 240.403.

The Board, in reaching its decision, was in error with their decision that the hearing officer was someone other than the charging official. The charge letter dated December 18, 1997 is over the signature of W. N. Hull who was also the hearing officer. Transcript at 6, the hearing officer stated, "on December 18th, I sent the following letter." Transcript at 14, the BLE Representative entered statement given the violation of 240.307 (c) (2) in that the charging official was the Carrier Officer holding the investigation. The hearing officer accepted the statement without comment.

Without question, the letter of December 18, 1997, is clearly a charging letter. It provided detailed information concerning the incident under investigation. It assumes certain facts that the petitioner had not stipulated to before trial. It notifies petitioner that he may seek representation and that the hearing would be held in compliance with the procedural requirements as specified by the Federal Railroad Administration in 49 CFR Part 240. Having all of the characteristics of a charging letter, the only conclusion is that it is a charging letter over the signature of a charging official who presided over the hearing.

Under the regulations, the certified engineer is held to a very high level of compliance. The Carrier should be held to an equal level of compliance.

In any agreement investigation, the Carrier bears the burden of proof. Under 240.307 (c) (12) the railroad had the burden of proving that the engineer's conduct was not in compliance with the operating rule in the FRA Hearing.

In frequent and unexplained signal failures (one not verified by subsequent testing) may be exceeding rare but the system is not foolproof. While the industry may not like to admit malfunctions, any experienced signal maintainer and/or experienced FRA signal inspector has knowledge of unexplained signal malfunctions. The system will show what signal should have been displayed but it does not show or prove the aspect of the signal at the time of the alleged failure.

The mere fact that subsequent testing showed that the signal was operating properly does not constitute irrefutable proof that the signal was red at the time the train passed signal at Bridge No. 19 especially when the preponderance of other evidence demonstrates that the crew sincerely reacted as if the signal displayed a favorable aspect.

Based upon the above, the petitioner requests that an Administrative Hearing be convened to determine the relevant facts in the Board's decision denying the petition of Engineer M. A. Dixon.

Respondent:

M. A. Dixon
1828 Rolling Hills Drive
Jefferson City, MO 65109

Respondent Representative:

David E. Thompson
General Chairman, BLE
414 Missouri Blvd.
Scott City, MO 63780

Respectfully submitted,

A handwritten signature in black ink, appearing to read "DE Thompson", written in a cursive style.

D. E. Thompson

Dated: October 16, 1998

cc: Robert L. Pugmire
Director of Operating Rules
Union Pacific Railroad Company
SLCC - Science and Industry Building
4600 South Redwood Road
Salt Lake City, UT 84123